IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12887 of 2003
With
CIVIL APPLICATION No. 11396 of 2005
In SPECIAL CIVIL APPLICATION No. 12887 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TEXTILE LABOUR ASSOCIATION - Petitioner(s)

Versus

PRESIDING OFFICER & 4 - Respondent(s)

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Appearance :
MR DS VASAVADA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1, 5,
RULE UNSERVED for Respondent(s) : 2,
MR RM DESAI for Respondent(s) : 3,
MR PRANAV G DESAI for Respondent(s) : 4,
NANAVATI ASSOCIATES for Respondent(s) : 5,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/12/2005

ORAL JUDGMENT

By way of this petition under Article 226/227 of the Constitution of India, the petitioner

has challenged the legality and validity of the order passed by the Debts Recovery Tribunal, Ahmedabad dated 6.8.2003 below Exh. T.13 in O.A. No. 317/2000 Exh.T.30; O.A. No. 227/2000 in Ex.T.27; and O.A. No. 138 of 2001 dismissing the applications submitted by the petitioner for joining it as a party-respondent in the aforesaid three Original Applications as a third party.

2. It appears from the record that Industrial Investment Bank of India, State Bank of India and others have filed Original Applications for recovery of amounts from the respondent No.5, original-debtor before the Debts Recovery Tribunal, Ahmedabad. In the said three Original Applications, the applicant submitted applications for joining as a third party contending inter alia that if ultimately the judgment and order goes against the respondent No.5 Company who has engaged more than 400 workmen and if possession of the company is taken over by the proposed Judgment Creditors on execution the labourers will be affected at that time, and the petitioner being a necessary and affected party three applications were made for the purpose. The Tribunal, after hearing all the parties, dismissed all the three applications by holding that the applicant as third party is not a necessary party to be joined in the Original Applications as presence of the applicants in the suit shall not help the Court

in adjudicating the dispute completely and effectively and as such they are not proper parties. The Tribunal has also observed that as and when properties of the respondent company are to be sold, the workers can lodge their claim before the Recovery Officer before the Official Liquidator as the case may be. Being aggrieved and dissatisfied with the aforesaid orders the petitioner has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri Vasavada, learned advocate appearing for the petitioner has submitted that the Tribunal has materially erred in dismissing their application for joining as party in the aforesaid three Original Applications as a third party as if ultimately any decree is passed against the respondent No.5 Company the petitioner and its members/labourers will be directly affected and therefore it is requested to allow the present Special Civil Application. On the other hand, the learned advocate appearing on behalf of the respondents No. 1 to 3 original-applicants before the Tribunal while opposing the present petition has submitted that the petitioner cannot be a necessary and/or proper party in the suit/Original Application filed by the Bank for recovery of their dues and their presence is not required for effecting hearing and adjudication of the Original Applications

and therefore the applications submitted by the petitioner is rightly rejected by the Tribunal. It is further submitted that in fact proceedings were already at the verge of completion and orders were to be passed by the Tribunal at that stage; the petitioner most probably at the instance of the respondent No.5 had submitted the application which came to be dismissed against which the present Special Civil Application is filed; there is stay of further proceedings before the Tribunal; and therefore it is requested to dismiss the present Special Civil Application.

4. It is required to be noted that the proceedings before the Debts Recovery Tribunal are at the instance of the creditors/banks for recovery of their dues from the respondent No.5 and the Tribunal has rightly observed that the petitioner Labour Union cannot be said to be a proper or a necessary party for the purpose of effective adjudication of the aforesaid three Original Applications. The only contention on behalf of the petitioner is that if ultimately the judgment and decree is passed and at the time of execution the company is closed then the petitioner will be directly affected. That stage has yet not come. The Tribunal has as such taken care while rightly observing that as and when properties of the respondent company are to be sold the workers can lodge their claim before the Recovery Officer or

before the Official Liquidator as the case may be.

5. Under the circumstances, it cannot be said that the impugned order passed by the Presiding Officer of the Debts Recovery Tribunal dated 6.8.2003 below Exh. T.13 in O.A. No. 317/2000 Exh.T.30; O.A. No. 227/2000 in Ex.T.27; and O.A. No. 138 of 2001 are in any way illegal and/or arbitrary which require interference in exercise of powers under Article 226/227 of the Constitution of India. However, it is observed that it will be open for the petitioner to move an appropriate application either at the stage of execution or at an appropriate stage before the Recovery Officer or before the Official Liquidator as the case may be and the same can be dealt with in accordance with law and on merits. However, the proceedings for recovery of the dues of the banks cannot be continued to be stayed. Hence, with the above observation, the Special Civil Application is dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated forthwith.

6. In view of dismissal of the main petition, there shall be no order on the Civil Application No. 11396 of 2005 and the same stands disposed of accordingly.

[M.R. Shah, J.]

RMR.